

## **REMARKS**

The outstanding final Office Action mailed March 9, 2005 has been carefully considered. In response thereto, please enter the following remarks. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **Response to 35 U.S.C. §103 Rejections**

Claims 65, 66, and 68-84 stand rejected under 35 U.S.C. §103. Specifically, claims 65, 66, and 68-84 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pinder, U.S. Pat. No. 6,105,134, hereinafter *Pinder* '134. Applicants respectfully traverse the rejections for at least the following reason.

#### **Relevant Law**

35 U.S.C. § 103(c) provides:

Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

#### **Analysis**

MPEP 706.02(1)(2) provides in pertinent part:

Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

Applicants respectfully submit that U.S. Patent No. 6,105,134 and the present application were commonly-owned or under an obligation to be assigned to the same entity. Applicants

respectfully submit that, based on the existence of recorded assignment documents, it is Applicants' understanding that the present application and the *Pinder* '134 reference were commonly owned by Scientific Atlanta at the time the invention was made. Therefore, Applicants respectfully submit that common ownership between the present application and the *Pinder* '134 reference at the time the invention was made has been established under 35 U.S.C. § 103(c).

Applicants respectfully submit that the *Pinder* '134 reference is therefore, disqualified as prior art under 35 U.S.C. § 103(c) because the *Pinder* '134 reference is "by another person," qualifies as prior art on under one or more sections (e), (f) and (g) of Section 102, and the present application and the *Pinder* '134 reference were commonly owned or under an obligation of assignment to the same person at the time the invention was made.

#### Conclusion

Since all of the obviousness rejections are premised on the *Pinder* '134 reference and the *Pinder* '134 reference is disqualified as prior art under 35 U.S.C. § 103(c), the obviousness rejections have been overcome and should be withdrawn.

**CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 65, 66, and 68-84 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



---

Jeffrey R. Kuester  
Registration No. 34,367

THOMAS, KAYDEN, HORSTEMEYER  
& RISLEY, LLP.

100 Galleria Parkway, Suite 1750  
Atlanta, Georgia 30339  
(770) 933-9500